

Applicants: Sean M. Reilly, et al.
Appln. No. 09/826,045

REMARKS

Reconsideration and allowance of the presently pending claims of the present application in view of the following remarks is requested respectfully.

1. Status of the Claims and Title

Claims 1 and 3-11 remain pending in this application. Claims 1, 3, and 9-11 have been amended, claim 2 has been canceled, claims 12-18 have been withdrawn without prejudice, and no claims have been added. The title has been amended to reflect the subject matter of the claims elected in response to the restriction requirement.

2. The § 103 Rejection

A. Summary of the Claimed Invention

The presently claimed invention relates to a method for detecting microorganisms comprising the steps of exposing a dry collection device containing a dry growth medium to ambient air, adding a premeasured volume of liquid to the dry growth medium after completion of the exposure step, and allowing any collected microorganisms to grow. The exposure step is accomplished by placing the dry collection device on a surface for a predetermined interval of time so that microorganisms in the air can settle out onto the collection device. Importantly, the method of the present invention involves a collection step that is accomplished with the use of a dry collection device. The use of a dry collection device enables long duration sampling times as compared to existing wet collection technologies which are limited to short duration exposures

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due to agar desiccation and the resultant “skinning over” effect. These limitations are shown in the use of hydrated Petrifilm™ for the wet collection of environmental microbials which is recommended by the manufacturer to be limited to 15 minutes.

B. The Present Invention Is Patentable Over the Nelson and Hansen Patents

Claims 1, 2, and 4-11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by each of U.S. Patent No. 5,681,712 to Nelson (the “Nelson Patent”) and U.S. Patent No. 4,565,783 to Hansen et al. (the “Hansen Patent”). This rejection is traversed respectfully.

A review of the Nelson Patent and the Hansen Patent reveals that the teachings of these references are limited to either wet collection or surface contact methods. The Nelson Patent describes a series of methods for growing, detecting and/or enumerating microorganisms which involve either the hydration of a thin film culture plate at the time of or prior to collection or the hydration of the culture plate following contacting the culture plate to a testing surface such as a microbial filter. More specifically, hydration of the culture plate at the time of collection is disclosed in the Nelson Patent by the inoculation of an aqueous sample of microorganisms to be evaluated. *See* column 9, lines 17-28; column 10, lines 21-32. Hydration of the culture plate prior to the time of collection is shown by the application of a liquid buffer to the culture plate prior to the subsequent application of a membrane such as a microbial filter. *Id.* Hydration of the culture plate is disclosed only in following contacting the culture plate to a testing surface such as a microbial filter. *See* column 10, lines 33-36. There is no disclosure or suggestion of collection methods which involve exposing the culture plate to ambient air followed by hydration

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after the exposure step is completed.

Similarly, the Hansen Patent discloses dry culture media for culturing microorganisms that are used by either wet collection or surface contact methods. More specifically, the Hansen Patent teaches the hydration of the dry culture media by means of water or an aqueous test sample, or the hydration of the culture plate following contacting the culture plate to a testing surface. *See* column 7, line 68 to column 8, line 12. As in the Nelson Patent, the Hansen Patent neither teaches nor suggests collection methods which involve exposing a culture plate to ambient air followed by a hydration step after the exposure step is completed. As a result, neither the Nelson Patent nor the Hansen Patent serve to anticipate or render obvious the presently claimed invention. Accordingly, applicants request respectfully that the rejection under 35 U.S.C. § 102(b) be withdrawn.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over each of the Nelson Patent and the Hansen Patent. This rejection is traversed respectfully. For the reasons set forth above, claim 1 is patentable over the Nelson Patent and the Hansen Patent. As a claim depending from claim 1, claim 3 is similarly patentable. Accordingly, applicants request respectfully that the rejection under 35 U.S.C. § 103(a) be withdrawn.

C. The Rejection of Claim 10 Under 35 U.S.C. § 112, Second Paragraph Is Moot

Claim 10 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants

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regards as the invention. Specifically, claim 10 is rejected under 35 U.S.C. § 112, second paragraph, for use of the phrase "capable of." Without conceding the correctness of the rejection, applicants have amended claim 10 such that the phrase "capable of" is not used. As a result, the rejection under 35 U.S.C. § 112, second paragraph, has been rendered moot. Accordingly, applicants request respectfully that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

3. CONCLUSION

In view of the foregoing amendments and remarks, favorable reconsideration and prompt Notice of Allowance of all of the pending claims are requested respectfully. Should the Examiner continue to have any doubts as to the allowability of any of the claims, he is requested respectfully to telephone the undersigned to discuss same before issuing further action, as it is believed such discussion would help to expedite the prosecution of this application.

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Respectfully submitted,



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